IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA.

SECOND APPEAL NO. 26 OF 2006

1. Shri Laxmikant Anant Gobre,
of major age

2. Smt. Shalini Laximikant Gobre,
of major age,
both residing at Velguem,
Bicholim Taluka.

Versus

M/s D.B. Bandodkar & Sons Ltd.
a company incorporated and registered
under the Companies Act, 1956,
having its Registered Office at
Dr. A.B. Road, Panaji-Goa.

Shri R.G. Ramani, Advocate for the Appellants.

Shri J.E. Coelho Pereira, Sr. Advocate with Shri V. Korgaokar, Advocate for the Respondent.

CORAM : **P.V. KAKADE, J.**

DATE : **3rd October, 2006**

ORAL ORDER :

Heard learned Counsel for both the parties. Perused the record.

2. The unsuccessful plaintiff has preferred this appeal against the judgment and order passed by the Additional District Judge, Mapusa, Goa, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Junior Division, Bicholim, dismissing the plaintiffs' suit.

3. The appellants/plaintiffs filed the suit for eviction and perpetual injunction of the respondent/defendant and came with the case that in an inventory proceedings bearing no.11/97, carried out in the Court of Civil Judge, Senior Division, Bicholim, plaintiffs were alloted two properties known as “Sawari Bhat” bearing Survey No. 50/2 and 50/7 of Village Velguem, Bicholim. According to them, their ancestors somewhere in the year 1956 had allowed the defendant to construct canteen, a Consumers Society and a house in the property bearing Survey No. 50/2. The said permission was given to one Dayanand B. Bandodkar, who was operating a mine in the vicinity. Said Bandodkar was allowed to construct the structures in the property bearing Survey No. 50/2 by the father of the plaintiff no.1. The well was constructed with the permission of plaintiffs by one Raikar who was General Manager of the defendant. In the year 1978, the plaintiffs allowed the defendants to construct a well in the property bearing Survey No. 50/7 and since then the defendant is using water from

the said well. The defendant is also parking, repairing and washing their vehicles in the open space from Survey No. 50/2 and 50/7 since the year 1978. On 5/04/1999, the legal notice was sent by the plaintiffs to the defendant, calling upon the defendant to stop from interfering with the possession in respect of the suit property and also revoked the licence given to the defendants for doing the construction of the canteen as well as Consumers Society in Survey No. 50/2 and called upon the defendant to vacate the suit structure and deliver peaceful possession of the area occupied by them to the plaintiffs, but they did not abide with the notice.

4. The plaintiffs categorically alleged that there was never any lease agreement between the plaintiffs and the defendant as alleged and defendant was only licencee whose licence came to be terminated by revoking the case. Hence, the suit for injunction and eviction came to be filed.

5. The defendant contested the suit, inter alia, contending that the allegations were false and in fact the defendant had acquired the permanent and irrevocable leasehold right to the property Surveyed under No. 50/2 and 50/7 by way of perpetual lease and sought dismissal of the suit.

6. The learned trial Judge after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiffs have failed to prove all their allegations and as such the suit came to be dismissed. Appeal was carried to the District Court. The learned Additional District Judge concurred with the findings recorded by the trial Judge and dismissed the appeal.

7. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The learned counsel for the appellants submitted that the lower appellate Court erred in dismissing the appeal after holding that the respondent had not established the creation of perpetual lease/irrevocable licence in respect of the suit property in their favour as claimed by the appellants, especially the relief of possession, when there was clear admission of the ownership of the appellants in respect of the suit property. It was also submitted that their alleged lease was said to be of 40 years of duration and it was not in writing and, therefore, lower Court should have held that it was nothing but a licence in which respondent was holding property. In other words, if we peruse the entire evidence on record, it is the case of the plaintiffs that the defendant without their permission or consent was using the suit property

for parking vehicles and repairing vehicles, using water from the well for washing the vehicles and pursuant to the revocation of licence issued to the defendant, the defendant was nothing but trespasser in the suit property and since their licence was terminated, they had no right to remain in the property. As against this, the defendant has come with the case that he is holding the property in perpetual lease since the year 1955 to 1978 respectively with constructions therein. The perusal of the judgment of both the Courts is is proper perspective and, therefore, it would brook no interference. The Apex Court in the case of ***Kondiba Dagadu Kadam*** **Versus** ***Savitribai Gujar*** **(1999) 3 SCC 722,** has observed that the concurrent findings of facts howsoever erroneous cannot be disturbed by the High Court in exercise of the powers under Section 100 of the Civil Procedure Code. It is also observed that substantial question of law has to be distinguished from substantial question of fact. In my view, this is what has happened in the present case. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court in a case where from a given set of circumstances two inferences are possible, one drawn by the lower appellate court is binding on the High Court in second appeal. Adopting any other approach is not permissible and the High Court cannot

substitute its opinion for the opinion of the first appellate court. This would be especially applicable to the present set of circumstances when the evidence on record as seen to be properly dealt with and appreciated in proper prospective and consequently, both the Courts below have reached to the conclusions which are seen to be just, legal and proper. In the result, appeal fails and stands dismissed with no order as to costs.

P.V. KAKADE, J.

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